

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**

JEFFREY ALLEN BUNCH,	)	
Register No. 187746,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 06-4204-CV-C-NKL
	)	
STEVE LONG, et al.,	)	
	)	
Defendant.	)	

**REPORT, RECOMMENDATION AND ORDER**

Plaintiff Jeffrey Bunch, an inmate confined in a Missouri penal institution, brought this case under the Civil Rights Act of 1871, 42 U.S.C. § 1983, and its corresponding jurisdictional statute, 28 U.S.C. § 1343. This case was referred to the undersigned United States Magistrate Judge for processing in accord with the Magistrate Act, 28 U.S.C. § 636, and L.R. 72.1.

On February 13, 2007, defendants filed a motion to dismiss for failure to state a claim, submitting numerous exhibits in support. Plaintiff has responded in opposition, also submitting exhibits in support. Based on the submission of evidence outside the pleadings, it appears defendants' motion is more appropriately addressed as one for summary judgment. Fed. R. Civ. P. 12(c).

Although the parties and the court have addressed plaintiff's motions for preliminary injunctive relief and other miscellaneous motions, an answer has not yet been filed, or a scheduling order entered or discovery conducted. In light of this case being in the preliminary stages of proceedings, defendants' motion to dismiss should be denied, without prejudice, subject to refiling. Defendants may file a motion to dismiss without presenting matters outside the pleadings, or may file such motion as one for summary judgment.

On July 2, 2007, plaintiff requested an extension of time to respond to the June 20, 2007 Report and Recommendation of this court. Upon consideration,

IT IS ORDERED that plaintiff is granted until July 23, 2007, to file objections to the June 20, 2007 Report and Recommendation. [31] It is further

RECOMMENDED that defendants' motion to dismiss be denied, without prejudice. [19]

Under 28 U.S.C. § 636(b)(1), the parties may make specific written exceptions to this recommendation within twenty days. The District Judge will consider only exceptions to the specific proposed findings and recommendations of this report. Exceptions should not include matters outside of the report and recommendation. Other matters should be addressed in a separate pleading for consideration by the Magistrate Judge.

The statute provides for exceptions to be filed within ten days of the service of the report and recommendation. The court has extended that time to twenty days, and thus, additional time to file exceptions will not be granted unless there are exceptional circumstances. Failure to make specific written exceptions to this report and recommendation will result in a waiver of the right to appeal. See L.R. 74.1(a)(2).

Dated this 11<sup>th</sup> day of July, 2007, at Jefferson City, Missouri.

/s/ William A. Knox

WILLIAM A. KNOX  
United States Magistrate Judge